UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

GARY WALTON,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**CIVIL NO. 99-47-B-H**
	)	
NALCO CHEMICAL COMPANY,	)	
	)	
DEFENDANT	)	

ORDER ON WALTON'S MOTION TO AMEND THE COMPLAINT AND NALCO'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

In this age discrimination case, the jury found specifically that employer Nalco Chemical Company willfully discharged employee Gary Walton on account of his age. The jury returned a verdict in the amount of $57,872 for back pay; $250,000 for "past and future emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life"; and $1,250,000 for punitive damages. By agreement, federal and state claims were not differentiated in the jury verdict form (federal and Maine law are essentially the same on the elements of liability). The parties have now filed post trial motions on both the total judgment to be entered and the viability of Walton's state law claim.

Under federal law—the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C.A. § 621 et seq. (West 1999), Walton can recover his $57,872 in back pay and the same amount again for his employer's willfulness, see 29 U.S.C.A. §§ 216 & 626 (West 1998, 1999)—a total of $115,744. No more money is available to Walton for his federal age discrimination claim. Not surprisingly, therefore,

Walton presses his state law claim. The Maine Human Rights Act ("MHRA") permits back pay, see 5 M.R.S.A. § 4613(2)(B)(2) (West Supp. 1999), and in addition, permits damages for things like pain and suffering and mental anguish, see 5 M.R.S.A. § 4613(2)(B)(8) and also allows punitive damages, see 5 M.R.S.A. § 4613(2)(B)(8)(c). But the statute imposes a cap on all but the back pay—in this case (the parties agree, given the number of employees), a cap of $300,000. See 5 M.R.S.A. § 4613(2)(B)(8)(e)(iv). Nalco asks me, therefore, to limit the entire judgment against it to $300,000, but there is no basis for doing so: the Act is clear that state law back pay is not included in the capped amount. Walton, in turn, wants me to award the federal total for back pay and willfulness ($115,744) on top of the state statutory cap of $300,000 for all his other categories of damages, but there is no basis for doing that either. This is not a mix-and-match game. On his state claim, Walton is entitled to $357,872 (the state back pay and the state cap) and on his federal claim he is entitled to $115,744, but he is not entitled to both simultaneously, and he cannot pick and choose elements of each.[1]

Finally, Nalco seeks to escape the state claim altogether (and thereby limit Walton to his federal $115,744) by arguing that Walton missed an essential

[1] Walton is wrong in arguing that ADEA liquidated damages are distinct from MHRA punitive damages. The Supreme Court stated in Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985), that ADEA liquidated damages are punitive and are available upon a showing of willful misconduct, meaning that "the employer . . . knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA." 469 U.S. at 125-26 (quoting with approval the case below, Air Line Pilots Assoc. Int'l v. Trans World Airlines, Inc., 713 F.2d 940, 956 (1983)). The punitive damages provision of the MHRA adopts the same standard. See 5 M.R.S.A. § 4613 (2)(B)(8)(c) (allowing punitive damages upon a finding of malice or reckless indifference). Walton is not entitled to a double punitive recovery, one under the ADEA and one under the MHRA.

element of his proof on his state claim—namely that Walton failed first to allege in his Amended Complaint and then to establish at trial that he had previously filed an administrative complaint with the Maine Human Rights Commission. See 5 M.R.S.A. § 4622 (West Supp. 1999).[2] Unfortunately for Nalco, this argument did not occur to it until Walton rested his case—the issue had not been raised as an affirmative defense, in the final pretrial memoranda, at the final pretrial conference, or in the trial briefs. If permitted at that late stage, it truly would have been trial by ambush. If there had been some such basis for precluding altogether the claims for emotional injury and punitive damages, both the court and the parties needed to know it well in advance. That is the whole reason for such things as notice pleading, final pretrial conferences and final pretrial orders.[3] I therefore rejected the employer's Rule 50(a) motion on the basis of waiver.[4] The pending motion for judgment notwithstanding the verdict fares no better. It is **DENIED** on the same basis and, as a result, Walton's motion to amend his complaint now to

[2] Technically this requirement is a precondition to only the compensatory and punitive damages part of Walton's state law case, not to the state law back pay.

[3] In fact, defendants often object to the introduction into evidence of right-to-sue letters on Rule 403 grounds. Lest there be any thought that a simple remedy here was to adjourn and let Walton come up with the proper witness or certified papers to show that he had made his administrative filing and obtained a right-to-sue letter, it deserves emphasis that all parties, including the court, were operating on a limited trial time schedule.

[4] At argument, I pointed out that the employer had never answered the Amended Complaint, which asserted the MHRA claim. Later I learned that the employee had never served the Amended Complaint on the employer—instead, after argument about the proposed amendment and the court's allowance of one count but not another, the parties simply proceeded on the assumption that it had been amended.

assert that he did in fact file with the Maine Human Rights Commission and obtain a right-to-sue letter is **MOOT**.

The Clerk shall enter judgment in the plaintiff's favor in the amount of Three Hundred Fifty-Seven Thousand Eight Hundred Seventy-Two Dollars ($357,872).

SO ORDERED.

DATED THIS 6TH DAY OF JULY, 2000.

_____
D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Bangor)
Civil Docket for Case #: 99-CV-47

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